

APR 17 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ROBERTO RAMIREZ-BARAJAS,

Defendant - Appellant.

No. 05-50796

D.C. No. CR-05-00997-DMS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Dana M. Sabraw, District Judge, Presiding

Submitted April 13, 2006**

Before: SILVERMAN, McKEOWN and PAEZ, Circuit Judges.

Roberto Ramirez-Barajas appeals his 78-month sentence imposed following his guilty plea to importation of marijuana into the United States, in violation of 21 U.S.C. §§ 952, 960. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

05-50796

Ramirez-Barajas contends he was a minimal or minor participant under U.S. Sentencing Guideline § 3B1.2 because he was not the owner of the ship nor its cargo of 498.8 kilograms of marijuana. We review for clear error the district court's factual finding that Moreno was not a minor or minimal participant. *See United States v. Cantrell*, 433 F.3d 1269, 1282 (9th Cir. 2006).

The district court did not err by denying Ramirez-Barajas' application for a minor role adjustment under section 3B1.2 because the record before us demonstrates Ramirez-Barajas recruited and supervised his co-defendant. Moreover, it was Ramirez-Barajas who piloted the ship.

AFFIRMED.